

**U.S. Senate
Republican Policy
Committee**

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Clinton's Regulation Reforms *One Tiny Step by Man — One Giant Leap of Faith*

Today we're announcing the first big steps of what I assure is just the beginning of a process that we intend to continue for as long as we have the public trust. . . . The philosophy that guided these changes is pretty simple: protect people, not bureaucracy; promote results, not rules; get action, not rhetoric; wherever possible, try to embrace common sense. [President Bill Clinton, March 16, 1995, announcing progress in "reinventing regulation."]

I certainly want to welcome President Clinton to the regulatory reform debate. Easing the burdens of compliance is a welcome first step, but misses the point that real reform means getting rid of unnecessary and overburdensome regulations . . . His proposal is no substitute for eliminating unnecessary regulations that stifle productivity, innovation and individual initiative. [Majority Leader Robert Dole, March 16, 1995.]

On Thursday, March 16, the Clinton Administration conducted a press event at a local print shop (that uses environmentally-correct soy ink) to announce two government-wide, four FDA, and twenty-five EPA "reinventing regulation" proposals (summarized in box on page 2, and in Appendix 2). The announcements appear designed to preempt the Republican regulatory reform efforts, particularly the markups scheduled for the following week in the Senate Governmental Affairs and Judiciary Committees. The Clinton Administration's timid proposals are in stark contrast to the serious efforts being led by Republicans in the Senate to slow the avalanche of new regulations, ensure unbiased risk assessments, require that costs are justified by the benefits, reduce burdens on small businesses, ensure appropriate judicial review of agency analyses, and establish a permanent mechanism to eliminate existing regulations that do not meet these higher standards.

Most of the "reinventing regulation" proposals announced by the President are positive, but few have implementation deadlines, none are subject to judicial review, and none go beyond what would be possible if the prescriptive underlying statutory requirements were changed by Congress. At least one proposal, the use of actual risk prioritization for drinking water treatment, appears to be related only to future rulemakings required by the Safe Drinking Water Act, which requires EPA to list, every three years, 25 new contaminants for which local systems must test. Without a legislative change to the Safe Drinking Water Act, however, the almost 90 contaminants already listed cannot be prioritized to reflect their actual, relative health risks.

According to a March 16 press release issued by Vice President Gore, "Today's event marks the first results" of the comprehensive review of existing regulations ordered by the President on February 21, 1995. That directive, which has a deadline of May 31, 1995, requested the agencies eliminate or revise those regulations that are outdated or otherwise in need of reform to make them less intrusive, to increase the use of private sector alternatives, or to eliminate certain regulations because the private sector, subject

to public accountability, or states or local governments, can do the job instead of the federal bureaucracy. However, such a comprehensive review by the Administration is doomed to be inadequate unless the Congress directly addresses or supersedes the statutory prescriptions and deadlines, now often enforced by the federal courts.

Moreover, the President's "reinventing regulation" proposals indicate that the disturbing disconnect between this Administration's promises and its actions has reached a new plateau. Even as the President announces these proposed reforms to the press, the EPA is sending to OMB a 600-page final "enhanced monitoring" rule that will bury small business and state air quality agencies, with -- in the EPA's own words -- "no real clean air benefits." (See discussion of the rule in the attached Appendix 1).

Attached as Appendix 1 is a list of many of the most costly EPA regulations that have been issued since the 1994 election or are scheduled to be issued for the remainder of the year. In some cases, the rules follow prescriptive environmental statutes, but in many cases they are extreme extensions of the discretion available to the agency under existing law. Those rules that the EPA had already finalized before the March 17 press event will not be changed by the application of the new principles for "reinventing environmental protection."

During the speech, the President took a swipe at the Republicans' regulatory moratorium bill, stating, "If we're going to be responsible, we ought to fix the problem, not just seek to freeze the problem." However, the regulatory reforms offered by the Clinton Administration last week do little to fix the existing problem -- the \$600-plus billion in annual compliance costs already imposed on individuals, state and local governments, and the economy by existing federal regulations.

As Senator Kit Bond stated in his response to the President's proposals, "The President is singing the words and we hope that when it comes time to work on the tough legislative changes that are needed, he will still be willing to carry the tune that is necessary to reduce the government regulatory burden."

Summary of the Press Event

President Clinton announced, four initiatives to reduce regulatory burdens:

- 1) **Enforcement:** Agencies will be given discretion to allow small businesses to apply the dollar amount of assessed fines to fix the problems that were the cause of the fines, or even waive the fines for first-time violators who agree to quickly correct the errors.
 - 2) **Paperwork:** The Administration will direct each agency to cut in half the frequency of periodic reports, consistent with statutory requirements.
 - 3) **FDA:** The Food and Drug Administration will implement a package of reforms that will include: eliminating full reviews for biotech drugs for minor and "risk-free" changes to an already approved drug; eliminate costly assessments on drugs that have no significant impact on the environment; eliminate 600 pages of regulations controlling the production of antibiotics; and eliminate pre-marketing approval of 140 categories of medical devices that pose low risks to patients, such as oxygen masks.
 - 4) **EPA:** The Administration will undertake 25 reforms of its environmental regulations, including increased emphasis on market mechanisms, such as President Bush's sulfur dioxide emission trading program for electric utilities. (See Appendix 2 for list of EPA proposals.)
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APPENDIX 1

EPA Final Rules Issued Since the '94 Elections

The Clinton Administration's Environmental Protection Agency (EPA) is busy issuing regulations that belie its lofty promises to "reinvent regulation." Since the 1994 elections, the EPA has issued the following major regulations — all of which are enormously expensive, are mired in command-and-control ideology, and would certainly fail any reasonable cost-benefit test based on prioritizing health risks.

Toxic Chemical Release Reporting: On November 30, 1994, the EPA published a final rule that almost doubled the current toxic release inventory of approximately 315 chemicals that must be reported to the EPA. (Industries have to report based on whether they manufacture, process, or otherwise use the chemical, irrespective of whether there is a release of that chemical.) A major problem with the rule is that it requires reporting on two whole chemical categories — nitrates and polychlorinated alkanes — without listing the specific chemical covered. There are hundreds of "nitrates" and hundreds of "polychlorinated alkanes," which now must be reported, increasing expense and the uncertainty of liability. This unfairly allows the EPA to fine and assess civil and criminal penalties on reporting facilities, without providing adequate notice that a specific chemical is on the list. The EPA's final rule also requires testing for and reporting of minute emissions of pesticides — which are produced to be sprayed on fields of crops. The EPA estimates direct and indirect costs are \$99 million for the first year and \$49 million for each year thereafter. Industry estimates the cost at six-fold the EPA estimate — \$600 million for the first year and \$300 million each year thereafter. One reason for the higher industry cost estimate is that the EPA refused to consider requirements, taxes, and fees assessed by state and local governments on all chemicals that are added to the EPA list. Industry also is concerned that the rule puts U.S. manufacturers at a competitive disadvantage to imported products that contain the same "toxic" chemicals, but are not subject to the reporting requirement.

Great Lakes Initiative Clean Water Quality Guidance: On March 13, 1995, the EPA issued, pursuant to a court order, its final rule implementing its Great Lakes Initiative Clean Water Quality Guidance. The EPA estimated that compliance costs for the proposed rule would be at least \$190 million in annual direct and indirect costs for the eight states bordering the Great Lakes, but also noted that costs could be as high as \$505 million per year. A study conducted for the Council of Great Lakes Governors estimates the costs at over \$2 billion per year and the loss of up to 33,000 jobs. Critics charge that this initiative addresses only one-tenth of the potential pollutants in the Great Lakes, and note that seven of the eight Great Lakes states (all except Michigan) already have the EPA-approved programs in effect for water quality enhancement. Accordingly, many believe the rule should be substantially rewritten under rigorous cost/benefit and sound science requirements. Critics also point out that the 1990 Great Lakes Critical Programs Act was supposed to be cooperative with the states and issued in the form of a guidance, not another command-and-control rule.

California Clean Air Implementation Plan: Disregarding the strong protests from the Governor of California, the EPA entered into an agreement with environmentalists and obtained a court-sanctioned "consent agreement" to finalize the EPA's proposed Federal Implementation Plan (FIP) on California. The FIP is designed to bring the State of California into compliance with the Clean Air Act of 1977's requirements (not the more realistic deadlines contained in the 1990 Clean Air Act Amendments). The EPA issued a final rule on February 15, 1995 (on the last day of a court-imposed deadline) to impose the consent agreement. Even though the final rule postponed the compliance date two years to 1997, the rule provides that the FIP will be imposed unless the State of California submits an air pollution plan to the EPA that EPA will approve. In other words, the EPA will use the FIP to pressure California to meet the EPA's onerous proposals. The California Governor's Office has estimated direct compliance costs over the 15-year life of the FIP to be \$4.8 billion, with economic losses to the State of California of more than \$17 billion and job losses of 165,000. However, other economists predict 115,000 job losses in the Los Angeles area alone. The EPA's initial FIP comprised 342 pages in the *Federal Register*, with hundreds of additional pages of requirements that were not published. There is concern that portions of the FIP may not produce overall improvement of California's air quality because of its many nonsensical and counterproductive provisions. The American Automobile Manufacturers Association estimates compliance will cost \$2,800 per new vehicle.

Ozone Transport Commission: On January 24, 1995, the EPA published its final rule (effective February 1995) approving the petition of the 12 northeast states and the District of Columbia, to require the sale of passenger cars and light trucks that meet California's air emissions standards (involving three different types of low-emission vehicles — at \$500 to \$2,000 extra cost per vehicle), instead of other, less costly proposals. Under the Clean Air Act Amendments, those 12 States and the District were required to vote on the petition: the vote was 9 to 4 in favor of the petition. The EPA approval of the petition prevents a reevaluation of the "California car rule" by the seven new governors from the nine States that supported the petition (of the seven, four are Republican whose seats were held by Democrats).

The EPA's Planned Rules for 1995

In addition, the EPA is scheduled to promulgate a number of other very costly regulations during the remainder of 1995. Some of the more problematic rules are discussed below:

Enhanced Monitoring Rule Under the Clean Air Act: The EPA has already submitted its final enhanced monitoring rule to OMB for review prior to being issued in time to meet the court-ordered deadline of April 30, 1995. Section 114(a)(3) of the 1990 Clean Air Act Amendments instructs the EPA to develop rules requiring certain stationary sources to periodically certify they are in compliance with the EPA's emissions standards. The 1990 Amendments state that one of the certifications to be made is "whether compliance is continuous or intermittent." This passage is the sole legal authority for the EPA's billion-dollar proposed rule, issued on October 22, 1993, that essentially blackmails stationary source operators into selecting continuous emissions monitors over record-keeping improvements. A continuous emissions monitor can cost more than \$100,000 to purchase and another \$100,000 per year to operate. Dozens of monitors will be required by the EPA for each large manufacturing facility.

A study prepared for the American Petroleum Institute estimates compliance with the proposed rule would cost the petroleum industry alone \$877 million in new capital expenditures and over \$300 million per year in increased operating costs. In addition, the EPA is expected to issue thousands of pages of "guidance" rules, which will specify which monitoring equipment will qualify, and how that equipment must be operated and maintained. The EPA has not demonstrated that the continuous emission monitors will significantly reduce pollution, and the agency has ignored far less expensive alternatives such as computer monitors based on neural network technology (one-tenth the cost of continuous emissions monitors). The proposal also increases permitting delays and reduces cost-saving options provided to sources in the 1990 Amendments, such as use of market trading of emissions allowances.

Radionuclides in Drinking Water: Prior to the EPA FY 1995 Appropriations, the EPA was scheduled to issue a final rule this spring regulating the maximum levels of six naturally occurring radionuclide gases in drinking water. The EPA estimated the proposed rule would cost \$310 million per year, including a capital cost of \$2.4 billion amortized over 20 years at a three percent interest rate. Many comments to the proposed rule included data documenting that the EPA significantly underestimated the cost to achieve the standard. The American Water Works Association projects the capital costs for the proposed standard could be greater than \$12 billion. The Association of California Water Agencies found that the standard could cost California over \$3.7 billion. There was almost unanimous agreement by state and local water agencies that the proposed rule poses significant financial and administrative burdens that will achieve very little in terms of radionuclide reductions. Under the FY 1995 Appropriations law, the EPA is prohibited from expending funds to issue this final rule during 1995.

Medical Waste Incinerators: The 60-day comment period on the proposed regulation opened on February 27, 1995, and is scheduled to close on April 28. The EPA estimates the cost to be between \$425 million and \$1.4 billion. The American Hospital Association believes that the EPA has significantly underestimated the cost of upgrading the incinerators and overstated the reductions of emissions.

Federal Test Procedures for Vehicle Engines: The EPA is expected to issue proposed and final regulations during 1995 to prescribe how new vehicles are to be tested for tailpipe emissions. This same test is also used to determine the fuel efficiency of the vehicle for CAFE purposes. In listing this regulatory initiative in the Regulatory Plan, the EPA offers no cost estimate. But, the new the EPA protocol could have hundreds of millions of dollars of impact on U.S. automobile manufacturers if the new test procedures deflate mileage scoring.

Clean Air Technology Standards for Plastics Manufacturing: The EPA is under a court-ordered deadline to issue a proposed rule in March of 1995 and a final rule in March of 1996 to set technology standards for facilities that produce polymers and resins. The cost will be over \$100 million to implement yet another technology-based control standard.

Clean Air Controls Rule for Refineries: The EPA is under court-order to issue a final rule imposing technology control standards on refineries before July, 1995. The EPA was required by the 1990 Clean Air Act Amendments to issue "maximum achievable control technology (MACT)" standards for achieving air pollution reductions at refineries. The EPA itself admits the health risk imposed by current refinery emissions is almost zero (one-half a statistical life per year, nation-wide). The EPA also estimated the compliance costs for refineries under its proposed rule, issued July 15, 1994, to be \$207 million in capital costs and \$110 million in annual compliance costs, including \$26 million per year just for monitoring, recordkeeping, and reporting activities. The EPA admitted up to seven small refineries would be forced to close in order to achieve what it recognizes as "small" clean air benefits.

Clean Air Operating Permits for Stationary Sources: A revised final EPA rule is expected to be issued by October 1995. Although a final rule is already in place, the EPA acknowledges the need to reform it. However, EPA lawyers argue that the 1990 Clean Air Act Amendments require rigidity. The controversial permits program is a problematic provision added by the slimmest of majorities to the 1990 Clean Air Act Amendments. The EPA's current final rule will require air emissions permits for between 34,000 and 60,000 facilities nationwide. Although the EPA's estimate of compliance costs imposed on states and businesses by its current final rule is \$526 million per year, that estimate is widely criticized. Industry estimates total costs exceed \$2 billion per year. The EPA has far more than merely implemented a bad statutory provision, it has added numerous requirements and complexities beyond congressional intent. Perhaps the most serious is the proposed rule's doubling of the number of facilities that will require permits by insisting that limitations on emissions be subject to federal enforcement. Thus, thousands of sources that have actual emissions that are limited by voluntary control devices or by state permits, must now find a mechanism to establish "federal enforceability." The current final permit rule is complex, rigid and costly, and would be altered significantly if the upcoming revised rule were subject to regulatory reforms. In the meantime, 35 states already have operating permit programs that are much less costly than the EPA rule.

Paper Industry "Cluster Rules": In December of 1993, the EPA proposed its so-called "cluster rules" to apply the Clean Air Act and the Clean Water Act to the paper industry; it may either re-propose or finalize the rule later this year. Despite the EPA's claims that the rules simplify existing regulations, many businesses say the new rules complicate compliance. The EPA estimates that compliance with the rule will cost the industry \$4 billion in capital costs. According to the paper industry, the rules would cost \$11 billion in new capital expenditures. The EPA has been quoted as admitting "the new rules would force 33 mills to close; 21,000 people would lose their jobs." The proposed rules currently offer little flexibility to industry to meet environmental objectives. Critics observe that the EPA has simply compiled the entire wish lists of the air and water regulators, rather than picking the most cost-effective clean water, clean air or RCRA (solid waste) approaches. Although there are indications that the EPA has been willing to work with industry and others to improve the rule, imposition by Congress of new cost/benefit and least-burdensome alternative requirements on the EPA in regulatory reform legislation would certainly improve the final product.

Cement Kiln Dust Determination: On January 31, 1995, the EPA announced their determination to regulate cement kiln dust (CKD), a high-volume, low-toxicity dust which is a by-product of cement production, under RCRA's Subtitle C's management standards for hazardous wastes. Under Subtitle C, the industry will be subject to increased costs and an "unjustifiable stigma" on its operations. The industry reports that CKD, under Subtitle C management authority, could be expected to prolong one theoretical life every seven hundred years at the cost of \$7 billion per year. As an alternative, the industry strongly believes that CKD should be regulated under the Bevill Amendment in RCRA which allows for less onerous management of low-toxic, high-volume wastes. Insisting that CKD is less toxic than other "Bevill wastes," the industry believes that this case is a strong candidate for regulatory reform.

APPENDIX 2

Reinventing Environmental Regulation EPA's 25 High Priority Actions

IMPROVEMENTS TO THE CURRENT SYSTEM

1. Open-market air emissions trading
2. Effluent trading in watersheds
3. Refocus hazardous waste regulation on high-risk wastes
4. Refocus drinking water treatment requirements on highest risks
5. Expand use of risk assessment in local communities
6. Flexible funding for states and tribes
7. Sustainable development challenge grants
8. Regulatory negotiation and consensus-based rulemaking
9. 25% reduction in paperwork
10. One-Stop emission reports
11. Consolidated federal air rules
12. Risk-based enforcement
13. Compliance incentives for small businesses and communities
14. Small business compliance assistance centers
15. Incentives for auditing, disclosure, and correction
16. Self certification
17. Public electronic access
18. EPA Center for environmental information and statistics

BUILDING BLOCKS FOR A NEW SYSTEM

19. Project XL
20. Alternative strategies for sectors
21. Alternative strategies for communities
22. Alternative strategies for agencies
23. Piloting third-party audits for industry compliance
24. Multi-media permitting
25. Design for the Environment — "Green Chemistry Challenge"